# Prison Abolitionist Pedagogy K

## Abolition

### Links

#### The overview to the Aff is that nullification is a good thing so that people who haven’t done anything that bad don’t get to go to prison, if we win that the 1ac is stuck within a liberal reformist mindset and that’s bad then you should endorse a critical abolitionist pedagogy of getting rid of prison in its entirety rather than reforming it

#### Black jurors are not selected, Empirics prove—Alabama, Louisiana, Houston, North Carolina—which means there is no nullification the aff can provide if black jurors aren’t even selected to be on the panel, the CJS systematically excludes black jurors at astonishing rates.

Adam **Liptak** <http://www.nytimes.com/2015/08/17/us/politics/exclusion-of-blacks-from-juries-raises-renewed-scrutiny.html?_r=0> Exclusion of Blacks From Juries Raises Renewed Scrutiny Adam Liptak is the Supreme Court correspondent of The New York Times. August 6th, 20**15**

In Louisiana’s Caddo Parish, where Shreveport is the parish seat, **a study** to be released Monday has **found that prosecutors used peremptory challenges three times as often to strike black potential jurors as others** during the last decade. **That is consistent with patterns researchers found earlier in Alabama, Louisiana and North Carolina, where prosecutors struck black jurors at double or triple the rates of others**. **In Georgia, prosecutors excluded every black prospective juror in a death penalty case against a black defendan**t, which the Supreme Court has agreed to review this fall. “If you repeatedly see all-white juries convict African-Americans, what does that do to public confidence in the criminal justice system?” asked Elisabeth A. Semel, the director of the death penalty clinic at the law school at the University of California, Berkeley. As police shootings of unarmed black men across the country have spurred distrust of law enforcement by many African-Americans, the new findings on jury selection bring fresh attention to a question that has long haunted the American justice system: Are criminal juries warped by racism and bias? Some legal experts said they hoped the Supreme Court would use the Georgia case to tighten the standards for peremptory challenges, which have existed for centuries and were, until a 1986 decision,[Batson v. Kentucky](https://www.law.cornell.edu/supremecourt/text/476/79), considered completely discretionary. (Judges can also dismiss potential jurors for cause, but that requires a determination that they are unfit to serve.) But **many prosecutors and defense lawyers said peremptory strikes allow them to use instinct and strategy to shape unbiased and receptive juries**. “I’m looking for people who will be open, at least, to my arguments,” said Joshua Marquis, the district attorney in Astoria, Ore. Jeff Adachi, San Francisco’s elected public defender, said peremptory challenges promote fairness. “You’re going to remove people who are biased against your client,” he said, “and the district attorney is going to remove jurors who are biased against police officers or the government.” Reprieve Australia, a group that opposes the death penalty and conducted the [Caddo Parish study](http://www.blackstrikes.com/), said the likelihood of an acquittal rose with the number of blacks on the jury. … Prospective jurors arriving at the courthouse here walk past a towering monument to the Confederacy, featuring grim likenesses of four Confederate generals. Carl Staples, a 63-year-old African-American, recalled how the monument made him feel when he reported for jury duty. “It dashes your hopes,” he said, taking a break at the gospel radio station where he works as an announcer. “It has its roots in the ideology of white supremacy.” He said much the same thing during jury selection in a 2009 death penalty case, and that played a part in his dismissal for cause. **Caddo Parish is**[**48 percent black,**](http://quickfacts.census.gov/qfd/states/22/22017.html)**and 83 percent of the defendants in the new study were black.** **But the typical 12-member criminal jury had fewer than four blacks on it, the report said**. Much of the gap had nothing to do with peremptory strikes. **Of the** 8,318 **potential jurors in the study,** which reviewed 332 trials from 2003 to 2012, only **35 percent were black.** Professor Diamond suggested reasons for this. Blacks may be less likely to be on jury lists that are drawn from voter registration records, less likely to appear when called, more likely to qualify for hardship exemptions and more likely to be disqualified for felony convictions. Still, **prosecutors** here **used peremptory strikes against 46 percent of the black potential jurors who remained, and against 15 percent of others. In 93 percent of trials, prosecutors struck a higher percentage of blacks than of others.** Dale Cox, the parish’s acting district attorney, said jury selection was more art than science and could not be quantified. “Statistics can be misleading,” he said. “There could be any number of variables that would explain those strikes that have nothing whatsoever to do with race.” The study’s findings, though, were in keeping with data from around the country. In a five-year period ending in 2010, [according to a lawsuit](http://www.eji.org/files/Complaint.pdf), **prosecutors in Houston and** Henry **Counties in Alabama used peremptory strikes to remove 82 percent of eligible black potential jurors from trials in which the death penalty was imposed**. There can be good reasons for that, said [Kent S. Scheidegger](http://www.cjlf.org/about/bioKSS.htm), a lawyer with the [Criminal Justice Legal Foundation](http://www.cjlf.org/), which generally supports prosecutors. “Opposition to the death penalty is much more common among black people, polls regularly show,” he said. Striking jurors for hesitation about capital punishment is legitimate, he continued, adding that it is largely balanced ”by defense lawyers doing exactly the same thing the other way.” In 2012, a **state trial judge in North Carolina**[**found**](https://www.aclu.org/files/assets/rja_order_12-13-12.pdf)**that prosecutors in his state** had **created a “cheat sheet” of race-neutral reasons to offer when challenged.** Among the choices were “air of defiance,” “arms folded” and monosyllabic responses. The judge, Gregory A. Weeks of Cumberland County Superior Court in Fayetteville, endorsed [**a study**](http://digitalcommons.law.msu.edu/facpubs/456/)**by law professors at Michigan State** University **examining** the **trials of** the state’s **death row** inmates in 2010. It **found that prosecutors had struck 53 percent of black potential jurors and 26 percent of others.** “**The probability of this disparity occurring in a race-neutral jury selection process is less than one in 10 trillion**,” Judge Weeks wrote. In Caddo Parish, the new study said, Mr. Cox struck black jurors at 2.7 times the rate of others over the course of 22 trials. (Mr. Cox[recently expressed](http://www.nytimes.com/2015/07/08/us/louisiana-prosecutor-becomes-blunt-spokesman-for-death-penalty.html) unusual enthusiasm for the death penalty.) He denied any improper conduct, and noted that he had never had a conviction questioned by a court or reversed because of his jury selection practices. He added that it was not always clear whether black jurors helped or hurt the prosecution. “The defendant on trial may be African-American and the victim is African-American,” he said. “That is a scenario that is 90 percent of our cases here in Shreveport. So you can see right away I want African-Americans on the jury, by and large, because they are the voice of the victim.” Of the 12 prosecutors who handled at least 20 trials, 10 were white. The highest dismissal rate was held by Brian H. Barber, a white former prosecutor who struck five times as many blacks as others. Now a judge, he did not respond to requests for comment.

#### Most low level offenders are coerced into taking plea deals, 97 percent of cases never go to trial because the system is already set up so that black people don’t get their day in court- straight turns the aff, guts all solvency because there is no one to nullify if they don’t get a trial, and shows how the structures of the CJS are inherently antiblack and nullification cannot change that

Andy **Clark** <https://www.hrw.org/news/2013/12/05/us-forced-guilty-pleas-drug-cases> US: Forced Guilty Pleas in Drug Cases Threat of Draconian Sentences Means Few Willing to Risk Trial December 5th, 20**13**

(New York) – **Federal prosecutors routinely threaten** extraordinarily **severe prison sentences to coerce drug defendants into waiving their right to trial and pleading guilty**, Human Rights Watch said in a report released today. **In the rare cases in which defendants insist on going to trial, prosecutors make good on their threats.** **Federal drug offenders convicted after trial receive sentences on average three times as long as those who accept a plea bargain,** according to new statistics developed by Human Rights Watch. The 126-page report, “[An Offer You Can’t Refuse: How US Federal Prosecutors Force Drug Defendants to Plead Guilty](http://hrw.org/node/120933),” details how prosecutors throughout the [United States](http://www.hrw.org/united-states) extract guilty pleas from federal drug defendants by charging or threatening to charge them with offenses carrying harsh mandatory sentences and by seeking additional mandatory increases to those sentences. Prosecutors offer defendants a much lower sentence in exchange for pleading guilty. Since drug defendants rarely prevail at trial, it is not surprising that **97 percent of them decide to plead guilty.** “Prosecutors give drug defendants a so-called choice – in the most egregious cases, the choice can be to plead guilty to 10 years, or risk life without parole by going to trial,” said [Jamie Fellner](http://www.hrw.org/bios/jamie-fellner), senior advisor to the US Program at Human Rights Watch and author of the report. “Prosecutors make offers few drug defendants can refuse. This is coercion pure and simple.” In the 1980s, when Congress enacted mandatory minimum sentencing statutes, lawmakers intended 10-year minimum sentences for drug kingpins and five years for mid-level traffickers. But because the laws key the sentence to the weight and type of drug, and not the specific role of the offender, **prosecutors can levy** the **same charges with the same mandatory sentence against a courier who delivers a package of drugs and the head of a drug organization** to whom the drugs are delivered. Nearly half **– 48 percent – of federal drug defendants have low-level functions such as street-level dealer** or courier, **and half to three-quarters of them are convicted of offenses carrying mandatory minimum sentences**. Prosecutors also pressure drug defendants to plead by threatening increased mandatory sentencing enhancements and penalties that are applicable if the defendant has one or more prior drug convictions or possessed a gun at the time of the offense. If the prosecutors carry out their threats, they add decades to the defendant’s time behind bars, resulting in punishments that, as one federal judge, John Gleeson of New York’s Eastern District, recently put it, are “so excessively severe they take your breath away.” In one of hundreds of cases Human Rights Watch reviewed, Sandra Avery, a small-time drug dealer, rejected a plea of 10 years for possessing 50 grams of crack cocaine with intent to deliver. The prosecutor triggered a sentencing enhancement based on her prior convictions for simple drug possession, and she was sentenced to life without parole. In addition to case reviews, the report is also based on numerous interviews with federal prosecutors, defense attorneys, and judges. It also includes new statistics developed by Human Rights Watch that provide the most recent and detailed measure of what the report calls the “trial penalty” – the difference in sentences for drug defendants who pled guilty compared with those for defendants convicted after trial. The trial penalty is, essentially, the price prosecutors make defendants pay for exercising their right to trial. **“Going to trial is a right, not a crime,**” Fellner said. “But **defendants are punished with longer sentences for exercising that right.”** **Prosecutors are able to impose the trial penalty because judges have been reduced to** virtual **bystanders in cases involving mandatory sentences.** **When prosecutors choose to pursue mandatory penalties and the defendant is convicted, judges must impose the sentences**. They cannot exercise their traditional role of tailoring sentences to each defendant’s conduct and culpability and of making sentences no longer than necessary to serve the purposes of punishment. Plea bargaining is broadly accepted largely on the pragmatic ground that if every criminal case went to trial, the overburdened criminal justice system would grind to a halt, and the US Supreme Court has accepted this logic in decisions sanctioning plea bargains. But under human rights principles – and longstanding principles of criminal justice in the United States – criminal sentences should be no greater than necessary to hold offenders accountable and protect the public. Prosecutors favor mandatory sentences because they enhance their leverage not only to get convictions via pleas, but to get defendants to cooperate with the government in the prosecution of others in exchange for a lower sentence. “**We don’t let police beat suspects to get confessions,”** said Fellner. “**Threatening someone with a life sentence can be just as coercive – and just as wrong.”**

### Impact

#### The Prison Industrial Complex is contingent upon black death, the aff reifies it by keeping it alive within their reformist pedagogy by assuming nullification can be used to reform the system. This only perpetuates the ideology that reformism works, the PIC is the best example of this since it has continually been reformed and tailored towards state-sanctioned violence versus the absolute abolishment of it

Dylan **Rodríguez** *The Disorientation of the Teaching Act: Abolition as Pedagogical Position Source:* *The Radical Teacher,*No. 88 (summer 20**10**), pp. 7-19

**The “prison industrial complex,**” in con- trast to the prison regime, **names the emergence over the last three decades of multiple symbiotic institutional relationships that dynamically link private business** (such as architectural firms, construction companies, and uniform manufacturers) **and government/state apparatuses** (including police, corrections, and elected officials) in projects of mul-tiply-scaled human immobilization and imprisonment. The national abolitionist organization Critical Resistance elabo- rates that **the prison industrial complex is a “system situated at the intersection of governmental and private interests that uses prisons as a solution to social, political, and economic problems**.”14 In fact, as **many abolitionist scholars have noted, the rise of the prison industrial complex is in part a direct outcome of the liberal-progressive “prison reform” successes of the 1970s**. The political convergence between liberals, progressives, and “law and order” conservatives/reactionaries, located within the accelerating political and geographical displacements of globalization,15 generated a host of material transformations and institutional shifts that facilitated— in fact,necessitated—the large-scale reor- ganization of the prison into a host of new and/or qualitatively intensified structural relationships with numerous political and economic apparatuses, including public policy and legislative bodies, electoral and lobbying apparatuses, the medical and architectural/construction industries, and various other hegemonic institutional forms. Concretely, **the reform of the prison required its own expansion and bureaucratic multiplication**: for example, **the reform of prison overcrowding came to involve an astronomical growth in new prison construction** (rather than decar- ceration and release), **the reformist out- rage against preventable deaths and severe physiological suffering from** (communi- cable, congenital, and mental) illnesses yielded the piecemeal incorporation of medical facilities and staff into prison protocols (as opposed to addressing the fact that mas- sive incarceration inherently creates and circulates sickness), **and reformist recognition of carceral state violence against emotionally disordered, mentally ill, and disabled captives led to the creation of new prisons and pharmaceutical regimens for the “criminally insane,” and so on**. Following the historical trajectory of Angela Y. Davis’ concise and accurate assessment that “during the (American) revolutionary period, the penitentiary was generally viewed as a progressive reform, linked to the larger campaign for the rights of citizens,”16 **it is crucial to recognize that the prison industrial complex is one of the most significant “reformist” achievements in U.S. history** and is not simply the perverse social project of self-identified reaction- aries and conservatives. Its roots **and** sustenance are **fundamentally located in the American liberal-progressive impulse toward reforming institutionalized state violence rather than abolishing it.**

### Alternative

#### Alternative- We should engage in prison abolitionist pedagogy, create the knowledge production that is needed to understand that structures that are inherently antiblack should be abolished.

Dylan **Rodríguez** *The Disorientation of the Teaching Act: Abolition as Pedagogical Position Source:* *The Radical Teacher,*No. 88 (summer 20**10**), pp. 7-19

**There are** some **immediate analytical** and scholarly **tools that form a basic pedagogical apparatus for productively exploding the** generalized **common sense that creates and surrounds the U.S. prison regime**. In fact, **it is crucial for teachers and students to collectively understand that it is** precisely **the circulation and *concrete enactment*of this common sense that makes it central to the prison regime,** not simply an ideological “supplement” of it. Put differently, many **students and teachers have a tendency to presume that the cultural symbols and popular discourses that signify and give common sense meaning to prisons and policing are *external*to the prison regime**, as if these symbols and discourses (produced through mass media, state spokespersons and elected officials, right-wing think tanks, video games, television crime dra- mas, etc.) **simply amount to “bad” or “deceptive” propaganda that conspiratorially hide some essential “truth” about prisons that can be uncovered. This is a** seductive and self-explanatory, but **far too simplistic, way of understanding how the prison regime thrives.** **What we require**, instead, **is a** sustained **analytical discussion that considers how multiple layers of knowledge**—including common sense and its different cultural forms—**are constantly *producing*a “lived truth” of policing and prisons that has nothing at all to do with an essential, objective truth.** **Rather, this fabricated, lived truth forms the template of everyday life through which we come to** believe that we more or less understand and “**know” the prison** and policing apparatus, and **which *dynamically produces our consent* and**/**or surrender to its epochal oppressive *violence.* As a pedagogical tool, this framework compels students and teachers to examine how deeply engaged they are in the violent common sense of the prison and the racist state**. Who is left for dead in the com- mon discourse of crime, “innocence,” and “guilt”? How has the mundane institution- alized violence of the racist state become so normalized as to be generally beyond comment? What has made the prison and policing apparatus in its current form appear to be so permanent, necessary, and immovable within the common sense of social change and historical transformation? In this sense, **teachers and students can attempt to concretely understand how they are a dynamic part of the prison regime’s production and reproduction— and thus how they might also be part of its abolition through the work of building and teaching a radical and liberatory common sense (this is political work that *anyone* can do, ideally as part of a community of social movement).**

#### The alt is about pedagogy- it is about this discourse we create within our debate rounds, our argument is the discourse must be centered around abolition and not reforming structures but getting rid of them-

#### The links are the structural analysis of the larger prison industrial complex—it is a link to the representation of jury nullification as a way to change anything not just jury nullification in specific instances

### Discourse First

#### a.) Nothing passes after this round is over—fiat is illusory. That means you shouldn’t base your decision on the implementation of the aff but rather how the aff is framed in terms of its representations because that’s the only impact in and out of the round.

#### b.) All we leave with is the knowledge we create in this round, which means if we win links to how the knowledge production coming out of the affirmative is bad then that’s why the alternative should be endorsed as a better epistemological way of education.

#### c.) Extend our roll of the judge--be a critical educator invested in abolition pedagogy, this means that if we show that the representation of nullification perpetuates a reformist mindset, you should endorse an ideology of prison abolition which conceptualizes a world without prisons rather than trying to reform it

#### The roll of the ballot is to vote for the debater who provides the best liberation strategy for the oppressed.

#### The roll of the judge is to be a critical educator invested in abolitionist pedagogy- this type of pedagogy is key anything else distracts us from structures that are systemically contingent upon black-death

Dylan **Rodríguez** *The Disorientation of the Teaching Act: Abolition as Pedagogical Position Source:* *The Radical Teacher,*No. 88 (summer 20**10**), pp. 7-19

Given the historical context I have briefly outlined, and the practical-theoretical need for situating an abolitionist praxis within a longer tradition of free- dom struggle, I contend that **there can be no liberatory teaching act**, **nor can there be an adequately critical pedagogical practice, that does not also attempt to become an abolitionist one.** Provisionally, **I am conceptualizing abolition as a praxis of liberation that is creative and experimental rather than formulaic and rigidly programmatic. Abolition is a “radical” political position, as well as a** perpetually creative and **experimental pedagogy, because formulaic approaches cannot adequately apprehend the biopolitics,** dynamic statecraft, **and internalized violence of genocidal** and proto-genocidal **systems of human domination.** As a productive and creative praxis**, this conception of abolition posits the material possibility and historical necessity of a social capacity for human freedom based on a cultural-economic infrastructure that supports the transformation of oppressive relations that are the legacy of genocidal conquest**, settler colonialism, racial slav- ery/capitalism,19 compulsory hetero-pa-triarchies, and global white supremacy. In this sense, abolitionist praxis does not *sin- gularly*concern itself with the “abolition of the prison industrial complex,” although it fundamentally and strategically *prioritizes*the prison as a central site for catalyzing broader, radical social transformations. In significant part, this suggests envisioning and ultimately constructing “a constella- tion of alternative strategies and institu- tions, with the ultimate aim of removing the prison from the social and ideological landscape of our society.”20 In locating abolitionist praxis within a longer politi- cal genealogy that anticipates the task of remaking the world under transformed material circumstances, this position refracts the most radical and revolutionary dimensions of a historical Black freedom struggle that positioned the abolition of “slavery” as the condition of possibility forBlack—hence “human”—freedom. To situate contemporary abolitionism as such is also to recall the U.S. racist state’s (and its liberal allies’) displacement and effective political criminalization of Black radical abolitionism through the 13thAmendment’s 1865 *recodification*of the slave relation through the juridical re- invention of a racial-carceral relation:

At the point when ends not existent, we just need to engage in pedgaggoy

## Case

### Doublebind

#### The aff is in a doublebind:

#### Either a) they get offense from assuming black people will be able to use nullification but the links show that plea deals and striking excludes them from being on the panel or even getting a trial which means black people aren’t even nullifying in the world of the aff

#### OR

#### b) They now have to get solvency off white people using nullification correctly because they still have to win nullification is a good idea if we win a disad to white nullification that’s a reason the entire case has no solvency and why the ALTERNATIVE solves the aff because if black people can’t get in the system and white people can’t be trusted within the system, then something is inherently flawed within the system and why a systematic analysis is uniquely better

### White people cant be trusted

#### White people don’t even deliberate in courtrooms when they have to make a life or death decision—studies prove

Gilad **Edelman**, *Why Is It So Easy for Prosecutors to Strike Black Jurors*? Gilad Edelman is a graduate of Yale Law School. <http://www.newyorker.com/news/news-desk/why-is-it-so-easy-for-prosecutors-to-strike-black-jurors> June 5th, 20**15**

Research backs up the common-sense intuition that excluding black people from juries can influence verdicts. **A 2004 study** by the Capital Jury Project **found that in cases with a black defendant and a white victim, having one or more black male jurors drastically lowered the chances of a death sentence. Experiments** have **show**n **that all-white mock juries spend less time deliberating, make more factual mistakes, and are more likely to convict a minority defendant than racially diverse juries**. **These studies suggest** what some prosecutors have long assumed: **striking potential black jurors raises the odds of a black defendant being convicted and increases the penalty he is likely to receive.**

#### We’re not making an analytical claim- white people have used nullification to nullify klan members our claim is rooted in history

Jonathan **Bressler** The University of Chicago Law Review Reconstruction and the Transformation of Jury Nullification Volume 78 Fall 20**11** Number 4 © 2012 by The University of Chicago

White juries were viewed as the principal cause of Reconstruction injustice. **In Texas**, for example, **the state prosecuted five hundred whites for murdering blacks in 1865** and 1866, **but in each trial, the all-white juries acquitted every defendant**.270 In Georgia, a Freedmen’s Bureau officer conceded that the “best men in the State admit that no jury would convict a white man for killing a freedman.”271 Likewise, a Florida sheriff lamented, “If a white man kills a colored man in any of the counties of this state, you cannot convict him.”272 Judge Thomas Settle of North Carolina told Congress that the “defect lies not so much with the courts as with the juries. You cannot get a conviction; you cannot get a bill found by the grand jury; or, if you do, the petit jury acquits the parties.”273 **No matter how vigilant the civil authorities were, they could not punish white offenders because in nine cases out of ten the men who commit the crimes constitute or sit on the grand jury, either they themselves or their near relatives or friends**, sympathizers, aiders, or abettors; and if a bill is found it is next to impossible to secure a conviction upon a trial at the bar. I have heard of no instance in North Carolina where a conviction of that sort has taken place. Throughout Reconstruction, Congress was well aware of the Southern juries’ defects. Senator Edmunds said that in the South “a jury trial is a mockery; it is a shield for cruelty and crime instead of being an instrument of punishment for it.”274 Henry Pease, a carpetbag senator from Mississippi, reported that in the South a “white man may slay a negro, and it may be proven as clear as the noon-day sun that it was a case of murder with malice aforethought; and yet you cannot get a jury to convict.”275 He continued: [I]n the State of Mississippi, where our laws are executed with as much impartiality as in any other southern State, I do not know among the several hundred homicides committed in that State a single instance, since reconstruction, where a white man has been convicted of killing a negro; and I venture the assertion that there have been over five hundred murders of negroes in that State by white men, and not one of them punished.276 Some identified Southern juries’ acquittals as based on the juries’ prejudiced conception of the law rather than on outright racial animus. Alluding to Dred Scott v Sandford, 277 Senator Morton contended that most Southern whites “have been educated and taught to believe that colored men have no civil and political rights that white men are bound to respect.”278 Conceivably, some might have understood the law to permit or to require acquittals despite white violence. Indeed, one judge reported that some **whites “feel and believe, morally, socially, politically, or religiously, that it is not murder for a white man to take the life of a negro with malice aforethought**.”279 If it were serious about enforcing the Fourteenth Amendment, Congress could not allow jurors who understood the law to permit white violence to decide cases. In early 1871, as white violence and jury nullification continued, Congress held hearings on one major source of problems: **the Ku Klux Klan**. Congress heard dozens of witnesses testify and collected hundreds of pages of testimony about the organization, including its members’ manipulative behavior on juries.280 “The evidence shows that this Ku Klux organization,” Senator Morton concluded, **required its members “to commit perjury as jurors, and to acquit at all hazards one of their number who may be upon trial**.”281 Among a litany of wrongs he discovered, Representative Clinton Cobb of North Carolina condemned KKK members because as jurors “they have nullified trials by perjury.”282 Such nullification, the legislators realized, escalated violence. Where **KKK members “sit upon juries**,” Senator Thomas Osborn of Florida recognized, “outrages of the worst order, the most inhuman violence and cold-blooded murders are committed with impunity.”283 “What is the civil law to” a KKK member, asked Senator Charles Drake of Missouri, when “[h]e knows that . . . the jurors who go there will acquit him in spite of all the evidence[?]”2

#### TURN. White people can’t be trusted trusting whiteness is ethical the aff trusts whiteness and only reifies notions that white morality can save black lives

Tommy **Curry** writes: Curry, Tommy J. [doctor in Associate Professor of Philosophy, Affiliated Professor of Africana Studies, Texas A & M University] In the Fiat of Dreams: The Delusional Allure of Hope, the Reality of Anti-Black Violence and the Demands of the Anti-Ethical. 20**13**. SPHS//SS

**Traditionally we have taken ethics to be**, as Henry Sidgwick’s claims, "**any rational procedure by which we determine what individual human beings 'ought'—or what is right for them**—or to seek to realize by voluntary action.”vii **This rational procedure is** however **at** **odds with** the **empirical reality** the ethical deliberation must concern itself with**. To argue,** as is often done, that the government, its citizens, or **white people should act justly, assumes that the possibility of how they could act defines their moral disposition.**  **If a white person could possibly not be racist, it does not mean that the possibility of not being racist, can be taken to mean that they are not racist**. In ethical deliberations dealing with the problem of racism, **it is common practice to attribute to historically racist** institutions, and **individuals universal moral qualities that have yet to be demonstrated. This abstraction from reality is what frames our ethical norms** **and allows us to maintain**, despite history or evidence, **that racist entities will act justly given the choice.** Under such complexities, the only ethical deliberation concerning racism must be anti-ethical, or a judgment refusing to write morality onto immoral entities.

#### This means the doublebind guts all solvency and impacts of the aff no black people in the system and can’t trust white people already in the system

### Discourse First

#### a.) Nothing passes after this round is over—fiat is illusory. That means you shouldn’t base your decision on the implementation of the aff but rather how the aff is framed in terms of its representations because that’s the only impact in and out of the round.

#### b.) All we leave with is the knowledge we create in this round, which means if we win links to how the knowledge production coming out of the affirmative is bad then that’s why the alternative should be endorsed as a better epistemological way of education.

#### c.) Extend our roll of the judge--be a critical educator invested in abolition pedagogy, this means that if we show that the representation of nullification perpetuates a reformist mindset, you should endorse an ideology of prison abolition which conceptualizes a world without prisons rather than trying to reform it

## Extra

#### Make short analytical turns about 3, to c/a to specific cards about white nullification is just bad

TURN. Jury Nullification

TURN. Jury Nullification

TURN. Jury Nullification

#### (go to solvency/value/movement card of the aff) TURN- Nullification is egotistic it’s just I do my individual will which appease my own consciousness the way in which the individual does freedom is to put their own thoughts over the law, and that seems to be radical, but that really is about mental masturbation because it is not productive but it is trying to pose you are doing something, when indeed reforming the structures does not get people out of a vicious cycle of being struck on the panel or going to prison for 10 years because of a plea deal, it only reaffirms the individual self-consciousness of appeasement that stops broader pedagogy of understanding individual appeasement does nothing rather we should be focused on overthrowing the system.

Now here’s how you write out your ballot:

All the links and turns should be framed as uniqueness for the alt because they show how the system is systematically institutionally and structurally opposed to even letting black people get in the court room to nullify i.e plea deals and not being selected as a juror, means the alt solves the aff in terms of having a structural analysis and understanding why they are excluded from the first place- we’re not just saying nullification doesn’t solve – were saying the pedagogy nullification affirmation creates is uniquely bad because it perpetuates the idea of some small reformism to change broader structures- we need to engage in discussion of the absolute abolition of these structures, not the reform of then and jruy nullification is just another reform.

c.) restorative justice- someone kills somebody, if you wanna have a conversation, if you wanna have that talk, then you should do that, angela david, make amends for that pain, nto to you, but to society, a concept of trying to bring the parties together in a way in which the person who has done the wrong, has to face the extent of the wrong that they have done, prisons don’t do anything about this, just lock them up and it is in the concept of what prisons are, during the day they go, and housing they are in prison, they come back each day, prison has no guards, ways to imagine prisons

concept of prison is derived from slavery- 13th ammendement, the idea that I need to hurt your body and make you into a slave, in order for you to behave, that’s why prisons are bad

the pedgagogy your trying to crrste is just indivudals trying to do something and idivdual vs the state, theres never really a undertstanding of the larger structure

we say things like we know cjs is racist, but our next step isn’t overthrow it, you say it sbad, lets have the most minimal action we can do to change it, lets do the least- and that’s why its horrible pedgagogy, yoru tewaching that a system is bankrupt system we need to work within in the least dangerous- that’s rodriguez says true change that matter is dangerous for people who get affected, not a coincident king and X got kille,d that shook a system, cory booker on the other hand, nah

## 2NR

## Frontlines

### AT Legalism Key

#### Now their entire 1AR is going to be premised off how legal change is good and we must engage with the law—however the supreme court has already decided striking jurors on the basis of their race is unconstitutional yet that literally did nothing to change that prosecutors still do it in the status quo, this hypercharges the link to the K because even after the court said hey don’t do that, the system adjusted so it could do just that.

Jay **Michaelson** <http://www.thedailybeast.com/articles/2015/09/28/how-prosecutors-get-away-with-cutting-black-jurors.html> *How Prosecutors Get Away with Cutting Black Jurors* September 28th, 20**15**

That changed somewhat **in 1986,** when **the Supreme Court decided *Batson v. Kentucky***. In [*Batson*](http://www.thedailybeast.com/articles/2013/07/15/michael-jackson-lawyer-mark-geragos-on-race-and-trayvon-martin.html), the court held **that using peremptory challenges to strike jurors on the basis of race was unconstitutional**. **Foster’s trial**, though, **took place after** *Batson*. How is that possible? Because **Batson has proven to be** almost **worthless** in practice. **All a prosecutor must do is provide some race-neutral reason for striking jurors, and that is extremely easy to do**. Maybe the juror didn’t make eye contact. Maybe she was female. Maybe he looked bored or inattentive—as most of us are at the end of hours of jury duty. Any of these reasons will do, and so, in Foster’s case and countless others, winning a “*Batson*challenge” is basically impossible. Except Foster’s case has turned out to be different. **During the lengthy appeals process** (nearly 30 years and counting), the **prosecutor’s notes were made public.** And they are laughable and tragic at the same time. **Black prospective jurors are annotated as B#1, B#2,** et cetera. Weighing the different options, the prosecutor noted that one has “the most potential to choose from out of the four remaining blacks.” And so on. And then **there were** the **absurd pretexts the prosecutor provided** to satisfy *Batson*. First, **he listed over 30 different reasons, basically throwing everything against the wall to see what would stick. He said three didn’t make enough eye contact. He said another was a social worker, which in fact she was not. He said one was close in age to the 18-year-old defendant; she was 34.** **All this make it abundantly clear that race was the predominant factor in striking these jurors,** notwithstanding the pretexts given for their dismissals.  And that’s why Foster’s case is now at the Supreme Court, which will have an opportunity to update *Batson*, and perhaps give it some teeth. The court will also, of course, determine the fate of Foster, who is developmentally disabled and who has now spent nearly 30 years on death row. “*Batson*has failed miserably to prevent race discrimination,” says Stephen Bright, who is Foster’s lawyer, a professor at Yale Law School, president of the Southern Center for Human Rights, and one of the leading advocates for criminal justice reform, including abolition of the death penalty. Bright has been down this road before, having won two Supreme Court cases on race discrimination and jury selection. And he says that Foster’s case is not unusual in the least.

#### And, you may be thinking why hasn’t the government done anything about plea deals, well the attorney general tried but his policies have loopholes that prosecutors get around—again, legal reforms but the system structurally adjusts itself to its antiblackness.

Andy **Clark** <https://www.hrw.org/news/2013/12/05/us-forced-guilty-pleas-drug-cases> US: Forced Guilty Pleas in Drug Cases Threat of Draconian Sentences Means Few Willing to Risk Trial December 5th, 20**13**

**In** August **2013, Attorney General Eric Holder instructed federal prosecutors to avoid charging certain low-level nonviolent offenders with offenses carrying mandatory minimum sentences** and to avoid seeking mandatory sentencing enhancements based on prior convictions unless the defendant’s conduct warranted such severe sanctions. It is too soon to tell how prosecutors will carry out **the policies**, but they **contain easily exploited loopholes and do not prohibit prosecutors from pursuing harsh sentences against any defendant who refuses to plead**. Moreover, if prosecutors ignore the letter or spirit of Holder’s policies there is no remedy. If a defendant is convicted, the judge must impose the applicable mandatory minimum sentences or sentencing enhancements sought by the prosecutor.

### AT Abstract

#### The 1AR will also claim the Alternative of the neg is too abstract there are 3 weighing argument

#### a.) Abstractions is getting away from material conditions and just theorizing—that’s not what the alt is, we LOOK to material conditions in the real world, i.e the 97 percent of cases that don’t go to trial or the way black jurors are excluded, and then use that structural analysis to create pedagogy that is key to liberation

#### b.) If we are abstract then so is the aff- all you say is jury nullification should happen, you cannot fiat a plan that forces juries to do anything because nullification is subjective- which means all we are saying is that prison abolishment should happen- if we win links to the aff then the alt is grounded in the inherent antiblackness of the system—again, we’re basing our alternative on empirical studies to prove systematic antiblackness, not random high theory

#### c.) That’s exactly what the slave masters said we don’t want to abolish slavery—but there had to be the thoughts, the justifications, the discussions that slavery should be abolished, that is our argument with the prison industrial complex, the rodriguez evidence is very good on how education spaces have been tainted by prison teaching rather than analyzing the system, understanding reforms won’t work, and making a call for abolishment. The alternative is not abstract because if saying modern say slavery like the Prison industrial complex should be abolished is abstract then I guess saying black people should live a normal life is too abstract for the aff

#### d.) (optional) Fiat is illusory- your plan doesn’t happen all we care about is the discourse we have so if your discourse is bad that matters to challenge since it comes before policies

### AT Abolition Logically Bad

#### 1. They have not understood the point of critical abolitionist pedagogy—the entire point of engaging in this experimental pedagogy which is the Rodriguez 10 evidence is to not be formulaic. It is not be rigid, and it is to conceptualize what the world needs and what the world would look like with the abolishment of these structures that our links have proved will always be antiblack.

#### 2. Uh, hello, there are other alternatives to prison—TURN they are stuck within an Anglo- American view of retribution in society the only reason we think about throwing people to jail and torturing them like slaves is because we are stuck in a white supremacist society like America, Angela Davis explains alternatives to prison that we should conceptualize instead:

**Angela Y. Davis and Mumia Abu-Jamal** Alternatives to the Present System of Capitalist Injustice http://www.thefeministwire.com/2014/01/alternatives-to-the-present-system-of-capitalist-injustice/ January 20, 20**14**

#### In other words, respect for individuality did not have to lead to modes of punishment that separated the individual from the community both physically and symbolically. “The Western way is to punish you, so that you don’t repeat the behavior,” Robert Yazzie, former Chief Justice of the Navajo Nation Supreme Court, told the international Institute for Restorative Practices in 2004. “But the Navajo way is to focus on the individual. You separate the action from the person.” This approach points to a form of justice that does not rely on assuming that the quality of the harm created by a person can be translated into quantitative terms, such as a specific length of prison time. The Navajo peacemaking process, Yazzie said, brings the offender and the victim together to talk to each other. “The first order of business the relatives would do in the peacemaking process is to get to the bottom of a problem. In court, I would sue you for battery and the state would say we have to prove all the elements of a crime and use the rules or the law to prove that you are guilty… that’s beside the point. What matters here is: why did this act happen in the first place? There’s a reason why the harm has occurred. Let’s deal with that. Maybe we have a history of problems between the two of us. If we can get to the bottom of a problem, all the other stuff will fall into place. The damage can be acknowledged by you, and I can go away happy from the process, knowing that you say that you’re not going to do it again.” This form of justice may be unobtainable in contemporary American society, but it contains much less oppression and torture than the Anglo-American form, and it takes a profoundly different approach. It is not a form of justice without pain. In a traditional society, being ostracized would be the greatest disability, for individuals’ self-definition relied, in great part, upon their membership and place within the clan and the tribe—the community. These people knew one another, and thus were best able to determine how to respond to violations of communal well-being.

Yet their very existence shows us the powerful historical precedents that may inform our present, by fueling a bigger, broader, deeper definition of America, one that is centered on freedom, rather than domination; one that is more nation than empire. Establishing community courts (especially, ones composed of non-lawyers) would utilize these insights from traditional societies, and thus mitigate the destructiveness inherent in the present corporate-type, assembly-line system that is breaking state budgets and individuals’ bodies and spirits on the anvil of so-called “criminal justice.” Nor is this idea unthinkable within the current U.S. legal system. In Pennsylvania, both the state constitution and state law provide for the establishment of “community courts,” as a section of what’s termed the minor judiciary. One was opened in Philadelphia in 2002, becoming one of approximately 30 community courts in U.S. cities (and 50 outside the U.S.) Like its counterparts, the Philadelphia Community Court was empowered to use community service and other restorative sanctions to address “quality of life” offenses such as prostitution, drug possession, and theft. When the court closed down in September 2011 due to funding cuts, it had enabled more than 500,000 hours of community service. It also provided offenders with social services such as medical care and drug counseling. “The whole purpose of community court was to take a holistic approach and to kind of address the needs of the individuals as they came in, with the recognition that sometimes people found themselves in court with issues that went beyond the case that was presented to the judge,” Municipal Court President Judge Marsha Neifield told the *Philadelphia Weekly*. “Community justice represents not a simple return to the rehabilitative ideal, but an approach to crime and punishment that is radically different from that of the traditional criminal justice process,” Adriaan Lani wrote in the *Harvard Civil Rights-Civil Liberties Law Review* in 2005. “Community justice initiatives—which include community prosecution, community courts, sentencing circles, and citizen reparative boards—advocate local, decentralized crime control policies generated through widespread citizen participation. They emphasize attacking the causes of crime, rehabilitating individual offenders, and repairing the harm caused by crime rather than punishing offenders according to traditional retributive or deterrent concerns.” Community courts that have attempted to use nonretributive or restorative justice models implicitly resist the mechanics of capitalist justice. They can demonstrate that it is far more effective to try to transform the social relations that have been damaged by those who commit acts of harm against others than to rely on prison sentences. Thus, these courts can serve as an important fulcrum for challenging and providing alternatives to retributive justice—which, combined with the criminalization of Black and Latino communities, has led to a titanic increase in the numbers of people behind bars. It is the principle that is important here, for it illustrates exactly how feasible this suggestion is. Freedom in one’s communal life can bleed into the community’s economic life, especially as the national polity forms structures that reflect its political will. Thus a nonracist community, which is theoretically free of the ideological blinders and bondage of white supremacy, could create social policies that conform more to the innate humanity of all persons, rather than to the exploitation of fear that typifies the regnant structures of criminal justice. What, systematically, must be changed? If we see the present structure as problematic, then we must consider how to destroy, reconstruct, or ameliorate it. And if history is our guide, we must be vigorous, for else we will see old forms reassert themselves with new masks, protecting the same (or worse*)*inequalities.

#### 3. Also, no link- obviously prisons aren’t abolished after this round, just like juries don’t automatically nullify, but our argument is first about pedagogy, before we look to all he practicalities of it, we have to acknowledge that prisons should be abolished, that’s the alternative that’s the pedagogy we endorse, and that’s the first step to negate before we conceptualize any more since our rodriguez evidence says we are all encapsulated by the prison regime, the first step is acknowledging we have to abolish it.

#### 4. Here’s a list of alternatives that are better than the torture of prisons:

<http://famm.org/wp-content/uploads/2013/08/FS-Alternatives-in-a-Nutshell-7.8.pdf>

FAAM Writes: (family against mandatory minimums)

**Drug Courts** – Drug courts are a special branch of courts created within already-existing court systems. **Drug courts provide court-supervised drug treatment and community supervision to offenders with substance abuse problems**. All 50 states and the District of Columbia have at least a few drug court programs. There are no drug courts in the federal system. Some states have drug courts for adults and for juveniles, as well as family treatment or family dependency treatment courts that treat parents so that they might remain or reunite with their children. Drug court eligibility requirements and program components vary from one locality to another, but they typically • Require offenders to complete random urine tests, attend drug treatment counseling or Narcotics Anonymous/Alcoholics Anonymous meetings, meet with a probation officer, and report to the court regularly on their progress; • Give the court authority to praise and reward the offender for successes and discipline the offender for failures (including sending the offender to jail or prison); • Are available to non-violent, substance-abusing offenders who meet specific eligibility requirements (e.g., no history of violence, few or no prior convictions); • Are not available on demand – usually, either the prosecutor or the judge handling the case must refer the offender to drug court; sometimes, this referral can only be made after the offender pleads guilty to the offense; and • Allow offenders who successfully complete the program to avoid pleading guilty, having a conviction placed on their record, or serving some or all of their prison or jail time; some programs also allow successful participants who have already pled guilty to have their drug conviction removed from their record. Average cost: Between $1,500 and $11,000 per participant per year5 Learn more at http://www.nadcp.org     http://www.gao.gov/new.items/d05219.pdf **Probation/Community Corrections** – Usually referred to as “community corrections” in the states (however, the federal Bureau of Prisons uses the term “community corrections” to refer to halfway houses (see below), a different alternative to incarceration), **probation keeps the offender in the community but puts limits and obligations on his freedom**. Probation can come with many conditions attached, including meeting regularly with a probation officer, staying under house arrest during certain parts of the day, taking random urine tests, remaining drug-free, working, doing community service, and participating in substance abuse or mental health treatment. If an offender does not comply with the probation conditions, more stringent supervision can be required, or, if the violation is serious, probation can be revoked and the person can be required to serve time in jail or prison. There are different varieties of probation: • On Intensive Supervisory Probation and Parole (ISP), probation officers have fewer cases, monitor offenders more closely, and meet with offenders more often. • Day reporting requires offenders to report to a location similar to a probation office on a daily basis. Here, they undergo daily drug and alcohol tests and inform their supervisors of their plans for the day, including where they will work or search for employment. Average cost: Probation: $9.92 per day per participant (state average)6 $10.79 per day per participant (federal)7 ISP: $6,000 per participant per year8 Day Reporting: $20 per day per participant9 Learn more at http://centerforcommunitycorrections.org http://www.uscourts.gov/fedprob/system/system.html Halfway Houses – Halfway houses (also called “community correction centers” or “residential reentry centers” by the federal Bureau of Prisons) are used mostly as an intermediate housing option to help a person return from prison to the community after he has served a prison sentence. Sometimes, though, halfway houses can be used instead of prison or jail, usually when a person’s sentence is very short. For example, halfway houses may be a good choice when a person has served time in prison, been released on parole, and then violated a parole condition and been ordered to serve a few months additional time for that violation. While in halfway houses, offenders are monitored and must fulfill conditions placed on them by the court. Usually, offenders must remain inside the halfway house except when they are going to court or to a job. Average cost: $58-$112 per day per participant (federal system)10 Learn more at http://www.bop.gov/locations/cc/index.jsp Home Confinement/**Electronic Home Monitoring** – Home confinement (also called “house arrest”) **requires offenders to stay in their homes except when they are in certain pre-approved areas** (i.e., at court or work). Often, home confinement requires that the offender be placed on electronic home monitoring (EHM). **EHM requires offenders to wear an electronic device, such as an ankle bracelet, that sends a signal to a transmitter and lets the authorities know where the offender is at all times.** Like probation, home confinement usually comes with conditions. If the offender violates those conditions, he can be put in jail or prison. Offenders on EHM usually contact a probation officer daily and take frequent and random drug tests. In many jurisdictions, an offender cannot be placed on EHM unless the court or a jail official recommends it. Average cost: $5-15 per day per participant11 Learn more at http://www.uscourts.gov/fedprob/supervise/home.html http://www.justnet.org/Pages/home.aspx **Fines and Restitution** – **Requiring the offender to pay supervision fees,** fines, and court costs can be used as an independent punishment or in addition to other punishments. “Tariff fines” are a set amount applied to every offender when a particular crime is committed (e.g., $500 for driving while intoxicated), regardless of the offender’s income level or ability to pay. For the wealthy, tariff fines can be too small to be a meaningful punishment. For the poor, tariff fines can be too large, resulting in jail time when the offender cannot pay. “Day fines” are one solution. They are not a flat amount, but are based on the seriousness of the crime and the offender’s daily income. Wealthier offenders pay more and pay an amount that is a meaningful loss of income, while those with lower incomes pay an amount they can afford and avoid jail. Restitution requires offenders to pay for some or all of a community or victim’s medical costs or property loss that resulted from the crime. Learn more at http://www.vera.org/download?file=127/How%2Bto%2Buse%2Bday%2Bfines.pdf **Community Service** – Community service can be its own punishment or can act as a condition of probation or an alternative to paying restitution or a fine (each hour of service reduces the fine or restitution by a particular amount, until it is paid in full). **Community service is unpaid work by an offender for a civic or nonprofit organization. In federal courts, community service is not a sentence, but a special condition of probation or supervised release**. Learn more at http://www.uscourts.gov/fedprob/supervise/community.html **Sex Offender Treatment and Civil Commitment** – **Many sex offenders are placed on probation, with requirements that they attend a sex offender treatment program, report regularly to a probation officer, do not contact their victims, do not use the internet, and do not live or work in certain areas.** Sex offender treatment programs can be inpatient (residential) or outpatient (non-residential) and generally use cognitive-behavioral therapy, counseling, and other approaches to reduce the likelihood that the person will commit another sex offense. About 20 states also have “civil commitment” programs, which place sex offenders in secure hospitals or residential treatment facilities for treatment. These offenders typically receive civil commitment only after they have finished serving a prison term for their sex offense. Offenders can be required to stay on civil commitment indefinitely, which means the programs can cost up to four times what it costs to keep an offender in prison. Learn more at http://www.csom.org Mental Health Courts – **Mental health courts**, like drug courts, **are specialized courts that place offenders suffering from mental illness**, mental disabilities, drug dependency, or serious personality disorders **in a court-supervised**, community-based mental **health treatment program**. Court and community supervision is combined with inpatient or outpatient professional mental health treatment. Offenders receive rewards for compliance with supervision conditions and are disciplined for noncompliance. They are also linked to housing, health care, and life skills training resources that help prevent relapse and promote their recovery. Often, offenders must first plead guilty to charges before being diverted to mental health court. Learn more at http://consensusproject.org/mhcp Restorative Justice – Restorative justice is a holistic sentencing process focused on repairing harm and bringing healing to all those who are impacted by a crime, including the offender. Representatives of the justice system, victims, offenders, and community members are involved and achieve these goals through sentencing circles, victim restitution, victim-offender mediation, and formalized community service programs. Sentencing circles occur when the victim, offender, community members, and criminal justice officials meet and jointly agree on a sentence that repairs the harm the offender caused. Victim-offender mediation allows the offender and victim to meet and exchange apologies and forgiveness for the crime committed. Restorative justice practices can be used alone or as a condition of a sentence of probation. Learn more at http://restorativejustice.org Boot Camp – Boot camp programs involve intense daily regimens that include physical exercise, individual counseling, educational classes, and studying for a GED. Today, boot camps are no longer used in the federal prison system and are rarely used in state corrections systems. Similar to a military boot camp, offenders follow a strict disciplinary code that requires them to wear short hair and uniforms, stand at attention before their officers, and address their superiors as “sir.” Offenders who complete the program and find a job can become eligible for early release. Once released, they may be put on probation. Learn more at http://www.ncjrs.gov/pdffiles1/nij/197018.pdf Public Shaming – Public shaming is public humiliation. It is used rarely and usually only for low-level misdemeanors. For example, a court ordered a convicted mail thief to stand outside a post office for a total of 100 hours wearing a sign that said, “I am a mail thief. This is my punishment.” Public shaming is intended to rehabilitate the offender and discourage him from reoffending.

## Extra

Thinkning: fuck the court system… literally nullification does absolutely nothing….no black people get to be juorros.. you cant say when they are cause that’s barely any impacts of your aff… that’s also ridcioulous, black folk lives ruined because of racism within the system.. we need to discuss getting rid of this shit completely, its structurally not going to change with nullification

AT your abstracting away from material conditions…lol are u kidding me were showing evidence that its so structurally fucke dup that there is no one in the fucking jurors to even nullify… and white people are irresponsible whe it comes to nullification.. edgaggoy sint abstract its contingent upon structural material condtiosn we can see

#### NO SOLVENCY- Black jurors can never get to nullify because they are barley selected as jurors, this also hypercharges the link to the K in how the system is structurally set up to exclude blacks

Gilad **Edelman**, *Why Is It So Easy for Prosecutors to Strike Black Jurors*? <http://www.newyorker.com/news/news-desk/why-is-it-so-easy-for-prosecutors-to-strike-black-jurors> June 5th, 20**15**

There are no comprehensive statistics on how often prosecutors strike jurors based on race, but there is little doubt that the practice remains common, especially in the South. **In** Caddo Parish, **Louisiana, prosecutors struck forty-eight per cent of qualified black jurors** between 1997 and 2009 **and only fourteen per cent of qualified whites**, according to a review by the Louisiana Capital Assistance Center. **In Jefferson Parish, where a quarter of the population is black,** the split was even greater—**fifty-five per cent to sixteen per cent—so that twenty-two per cent of felony trials between 1994 and 2002 had no black jurors.** According to a [2010 report](http://www.eji.org/files/EJI%20Race%20and%20Jury%20Report.pdf) by the Equal Justice Initiative documenting discrimination in eight Southern states, **half of all juries that delivered death sentences in Houston County, Alabama, between 2005 and 2009 were all white; the other half had a single black juror**. Houston County is twenty-seven per cent black. In 2012, a North Carolina judge found that in capital cases between 1990 and 2010 prosecutors statewide struck potential black jurors at twice the rate of non-blacks.\* A regression analysis showed that the disparity held even when controlling for other factors that correlate with race. In a pained opinion, the judge concluded, “Race, not reservations about the death penalty, not connections to the criminal justice system, but race, drives prosecution decisions about which citizens may participate in one of the most important and visible aspects of democratic government.” Why do race-based peremptory challenges persist? Because race is an unfortunate but powerful basis for generalization. To state the obvious, black people are more likely to have been targeted or abused by police; to be affected by the extreme racial disparities in arrests, incarceration, and the death penalty; and to understand that crimes against black victims are prosecuted less vigorously than those against whites. All things being equal, a prosecutor has reason to think that a black juror is less likely to side with the government against a black defendant than a white one. (Former prosecutors with whom I spoke stressed that attorneys defending black clients are just as likely to strike whites in order to get more blacks on the jury. The Supreme Court has held that defense strikes of white jurors also violate Batson.)

## Card

Dylan **Rodríguez** *The Disorientation of the Teaching Act: Abolition as Pedagogical Position Source:* *The Radical Teacher,*No. 88 (summer 20**10**), pp. 7-19

Concretely, **the reform of the prison required its own expansion and bureaucratic multiplication**: for example, **the reform of prison overcrowding came to involve an astronomical growth in new prison construction** (rather than decar- ceration and release), the reformist out- rage against preventable deaths and severe physiological suffering from (communi- cable, congenital, and mental) illnesses yielded the piecemeal incorporation of medical facilities and staff into prison protocols (as opposed to addressing the fact that mas- sive incarceration inherently creates and circulates sickness), and reformist recognition of carceral state violence against emotionally disordered, mental- ly ill, and disabled captives led to the creation of new prisons and pharmaceutical regimens for the “criminally insane,” and so on. Following the historical trajectory of Angela Y. Davis’ concise and accurate assessment that “during the (American) revolutionary period, the penitentiary was generally viewed as a progressive reform, linked to the larger campaign for the rights of citizens,”16 it is crucial to recognize that the prison industrial complex is one of the most significant “reformist” achievements in U.S. history and is not simply the perverse social project of self-identified reaction- aries and conservatives. Its roots and sustenance are fundamentally located in the American liberal-progressive impulse toward reforming institutionalized state violence rather than abolishing it.

**The absolute banality of the prison regime’s presence** in the administrative protocols, curricula, **and educational routines of** the **school is** almost **omnipresent**: aside from the most obvious appearances of the racist policing state on campuses everywhere, **it is generally** the funda- mental **epistemological**(hence pedagogical) assumption of the school that 1) social order (peace) requires a normal- ized, culturally legitimated proliferation of state violence (policing, juridical punishment, war); 2) the survival of civil society (schools, citizenship, and individual “freedom”) depends on the capacity of the state to isolate or extinguish the crimi- nal/dangerous; and 3) the U.S. nation- building project is endemically decent or (at least) democratic in spirit, and its apparent corruptions, contradictions, and systemic brutalities (including and espe- cially the racial, gender, and class-basedviolence of the prison industrial complex) are ultimately reformable, redeemable, or (if all else fails) forgivable. It is virtually indisputable—thoughalways worth restating—that most peda- gogical practices (including many “criti- cal/radical” ones) invest in producing or edifying “free” and self-governing citi- zen/subjects. The assumptive framework of this pedagogical framework tends to*conflate civil society with “ freedom,”*as if one’s physical presence in civil society is separable from the actual and immi- nent state violence of criminalization and policing. (Is a criminalized and policed person really “free”?). This pedagogical approach also leaves unasked the ques- tion of whether the central premise of the teaching practice itself—that a given pedagogy *is actually capable*of produc- ing free citizen/subjects under such his- torical conditions—might implode if its conditions of possibility were adequately confronted.

In relation to the radical challenging of common sense discussed above, another critical analytical tool for building an abolitionist pedagogy entails the rigorous, scholarly dismantling of the “presentist” and deeply ahistorical understanding of policing and prisons. Students (and many teachers) frequently enter such dialogues with an utterly mystified conception of the policing and prison apparatus, and do not generally understand that 1) these apparatuses in their current form are very recent creations, and have not been around “forever”; and 2) the rise of these institu- tional forms of criminalization, domestic war, and mass-scale imprisonment forms one link in a historical chain of genocidal and proto-genocidal mobilizations of the racist state that regularly take place as part of the deadly global process of U.S.nation-building. In other words, not only is the prison regime a very recent inven- tion of the state (and therefore is neither a “permanent” nor indestructible institu- tional assemblage), but it is *institution- ally and historically inseparable*from the precedent and contemporaneous struc- tures of large-scale racist state violence. Asserting the above as part of the core analytical framework of the pedagogical structure can greatly enable a discussion of abolitionist possibility that thinks of the critical dialogue as *a necessary continu- ation*of long historical struggles against land conquest, slavery, racial colonialism, and imperialist war. This also means that our discussions take place within a longer*temporal*community with those liberation struggles, such that we are neither “crazy” nor “isolated.” I have seen students and teachers speak radical truth to power under difficult and vulnerable circum- stances based on this understanding that they are*part of a historical record.*

A working conception of **the “prison regime” offers a** useful tool of **critical social analysis as well as a theoretical framework for contextualizing critical,** radical, and perhaps **abolitionist pedagogies**. In subtle distinction from the criminological, social scientific, and common sense under- standings of “criminal justice,” “prisons/ jails,” and the “correctional system,” the notion of a prison regime focuses on three interrelated *technologies and processes*that are dynamically produced at the site of imprisonment: first, **the prison regime encompasses the material arrangements of institutional power that create informal (and often** nominally **illegal**) routines and **protocols of *militarized*** *physiological* ***domination*over human beings** held cap- tive by the state. **This domination privileges a historical anti-black state violence that is particularly traceable to the latter stages of continental racial chattel slavery and its immediate epochal aftermath in“post-emancipation” white supremacy and juridical racial segregation/apartheid**—aprivileging that is directly reflected in the actual demography of the imprisoned population, composed of a Black majority. The institutional elaborations of this white supremacist and anti-black carceral state create an overarching system of physi- ological domination that *subsumes*differ- ently racialized subjects (including whites) into institutional routines (strip search- ing and regular bodily invasion, legally sanctioned torture, ad hoc assassination, routinized medical neglect) that revise

There are some immediate analytical and scholarly tools that form a basic pedagogical apparatus for productively exploding the generalized common sense that creates and surrounds the U.S. prison regime. In fact, it is crucial for teachers and students to collectively understand that it is precisely the circulation and *concrete enactment*of this common sense that makes it central to the prison regime, not simply an ideological “supplement” of it. **Put differently, many students and teachers have a tendency to presume that the cultural symbols and popular dis- courses that signify and give common sense meaning to prisons and policing are *external*to the prison regime**, as if these symbols and discourses (produced through mass media, state spokespersons and elected officials, right-wing think tanks, video games, television crime dra- mas, etc.) simply amount to “bad” or “deceptive” propaganda that conspiratorially hide some essential “truth” about prisons that can be uncovered. This is a seductive and self-explanatory, but far too simplistic, way of understanding how the prison regime thrives. What we require, instead, is a sustained analytical discussion that considers how multiple layers of knowledge—including common sense and its different cultural forms—are constantly *producing*a “lived truth” of policing and prisons that has nothing at all to do with an essential, objective truth. Rather, this fabricated, lived truth forms the tem- plate of everyday life through which we come to believe that we more or less understand and “know” the prison and policing apparatus, and which *dynamically produces our consent and/or surrender to its epochal oppressive violence.* As a pedagogical tool, this framework compels students and teachers to examine how deeply engaged they are in the violent common sense of the prison and the racist state. Who is left for dead in the common discourse of crime, “innocence,” and “guilt”? How has the mundane institutionalized violence of the racist state become so normalized as to be generally beyond comment? What has made the prison and policing apparatus in its current form appear to be so permanent, necessary, and immovable within the common sense of social change and historical transformation? In this sense, teachers and students can attempt to concretely understand how they are a dynamic part of the prison regime’s production and reproduction— and thus how they might also be part of its abolition through the work of building and teaching a radical and liberatory com- mon sense (this is political work that *anyone* can do, ideally as part of a community of social movement). Additionally, the abolitionist teacher can prioritize a rigorous—and vigorous— critique of the endemic complicities of liberal/progressive reformism to the transformation, expansion, and ultimate reproduction of racist state violence and (proto)genocide; this entails a radical cri- tique of everything from the sociopolitical legacies of “civil rights” and the oppressive capacities of “human rights” to the racist state’s direct assimilation of1970s-era “prison reform” agendas into the blue- prints for massive prison expansion dis- cussed above.17 The abolitionist teacher must be willing to occupy the difficult and often uncomfortable position of *political*leadership in the classroom. To some, this reads as a direct violation of Freirian conceptions of critical pedagogy, but I would argue that it is really an elaboration and amplification of the revolutionary spirit at the heart of Freire’s entire lifework. That is, how can a teacher expect her/ his students to undertake the courageous and difficult work of inhabiting an abolitionist positionality—even if only as an “academic” exercise—unless the teacher herself/himself embodies, performs, and oozes that very same political desire? In fact, it often seems that doing the latter is enough to compel many students (at least momentarily) to become intimate and familiar with the allegedly impossible. Finally, the horizon of the possible is only constrained by one’s pedagogical willingness to locate a particular political struggle (here, prison abolition) within the long and living history of liberation movements. In this context, “prison abolition” can be understood as one important strain within a continuously unfurling fabric of liberationist political horizons, in which the imagination of the possible and the practical is *shaped but not limited*by the specific material and institutional conditions within which one lives. It is useful to continually ask: on whose shoulders does one sit, when undertaking the audacious identifications and political practices endemic to an abolitionist pedagogy? There is something profoundly indelible and emboldening in realizing that one’s “own” political struggle is deeply connected to a vibrant, robust, creative, and beautiful legacy of collective imagination and creative social labor (and of course, there are crucial ways of comprehending historical liberation struggles in all their forms, from guerilla warfare to dance).